

CHAPTER 2 – SUMMARY OF FINDINGS AND RECOMENDATIONS

The data and findings of the monitoring report have documented that the existing PASPGP process is generally consistent with the Federal Section 404 standards. However, because some Section 404 and Chapter 105 process differences have been identified, recommendations for improvements to the PASPGP process are provided, for the purpose of minimizing potential for authorization of more than minimal impacts to aquatic resources through the PASPGP program. Many of these recommended process improvements are already underway. These process inconsistencies, with recommendations, are provided below:

1. Single and Complete Project Reviews

The Monitoring Report has shown that in a few instances, multiple authorizations were issued without a comprehensive review. The Federal Section 404 program prohibits piecemealing of projects, and requires that permits only be issued for single and complete projects. PADEP Regional Offices and the County Conservation Districts (CCD) can independently issue permits for multiple components of a single and complete project. Single and complete project reviews provide an opportunity for the consideration of the full range of alternatives, impacts to aquatic resources, minimization, avoidance, and appropriate compensatory mitigation.

Recommendations

It is recommended that the Corps and PADEP jointly develop specific permit processing guidelines including a screening process to identify projects that propose multiple impacts. This screening process will assist permit evaluators in identifying applications that should be processed under a single and complete project review to assure no more than minimal individual or cumulative impacts to aquatic resources are authorized under the PASPGP.

It is also recommended that training be held among the Corps, PADEP and CCD staff regarding single and complete project reviews.

2. The General Permit (GP) Program

The PADEP GP program applies to a variety of activities that correspond to Federal reporting and non-reporting Nationwide Permits (NWP) in addition to Corps Individual Permits (IPs). The PADEP permit process currently in place is a “registration only” process, which does not uniformly require the submittal of project plans or sketches, identification of impact acreage, pre- or post-construction field reviews, assessments or verification of wetland or stream impacts, or provide for coordination among the PADEP permitting offices. Although this registration process may provide more consideration in review than Corps nonreporting Nationwide Permits, many of the activities covered by PADEP’s GPs correspond to Corps permits that would require detailed plans and the identification of project impacts. Without this information, a review commensurate with Federal 404 requirements cannot be conducted and the process can result in more than minimal impacts to aquatic resources, with affects to historical, archeological and endangered species. These GPs are either registered by the delegated CCDs (delegated counties) or by PADEP Regional Offices (non-delegated counties).

The current GP process doesn’t include a clear mechanism to prevent the piece-mealing of larger projects without a single and complete review and could result in more than minimal impacts to aquatic or other resources to be authorized under the PASPGP.

Recommendation

PADEP should add requirements for project specific plans to the GP registration forms. It is also recommended that a mechanism be developed to coordinate previously issued authorizations with ongoing application reviews among all of the various PADEP offices, for a single project.

3. Emergency Permits

Emergency permits can be issued under the Federal Section 404 and PADEP Chapter 105 programs. These permits are issued after storm events to alleviate imminent threat to life, property, or the environment. Under the current process, PADEP issues a Chapter 105 EP and, in most cases, a PASPGP. These EPs and the associated PASPGPs are typically issued in the field by the PADEP evaluator. In the majority of cases, this EP process meets the needs of individuals and municipalities in need of an efficient

remedy during and immediately following flood emergencies. In some instances, the Monitoring Report has identified that some EPs have been issued as reviewed by the Corps for non-emergency work or for work in excess of that necessary to alleviate an imminent threat to life, property or the environment. Some of these projects have resulted in unwarranted channelization and filling-in of stable natural stream meanders, adversely impacting stream habitat and bank stability.

Compliance investigations have been impaired at times due to vaguely written permits, unclear project locations, and the lack of identified work limits or accurate sketches of the authorized work.

Recommendations

In keeping with the recommendations provided in this report, the Corps and PADEP are currently proposing to modify the PASPGP Standard Operating Procedures (SOP). These proposed changes include a requirement for project location information, accurate project sketches, and specific project limitations. The PASPGP should not be issued for the relocation of stable or long standing stream channels, but only for emergency work that is needed to alleviate imminent threat to life property or the environment. Refinements are also being made to the reporting procedures for EPs to insure the opportunity for Corps review prior to the issuance of larger EPs (impacting more than 250 linear feet of stream) without the more lengthy timeframes associated with standard reporting projects.

4. Avoidance, Minimization, and Alternatives Analysis

The Federal Section 404 program and the PADEP Chapter 105 Programs require that the permit review process include consideration of alternatives to insure that impacts to the aquatic environment have been avoided or minimized to the greatest extent possible. As part of the process, the consideration of alternatives must be documented in the Record of Decision. The PASPGP is appropriately conditioned to require that impacts to waters of the United States, including wetlands, are avoided and/or minimized.

A review of PADEP individual permit files revealed that written findings, with regard to avoidance and minimization were provided 64 percent of the time in the Records of Decision. Although discussions with PADEP

reviewers indicates alternatives, avoidance and minimization is generally considered, file documentation is unclear on the project reviews. In addition, project files for PADEP Small Project Permits should include documentation that any practicable on-site minimization, commensurate with the degree of impacts, was conducted.

Recommendations

As recommended in this report, PADEP has proposed to improve the documentation of this process by amending the Record of Decision. It is also recommended that the requirement for consideration and appropriate documentation of avoidance, minimization, and alternatives, commensurate with the level of impacts be added to the SOP. In addition, joint Corps and PADEP training should be held to ensure consistent application of the alternatives analysis process.

5. Endangered Species

The Corps is required to comply with Section 7 of the Endangered Species Act. The USFWS has provided input into the monitoring effort with regards to compliance with Section 7 and has identified several concerns regarding coordination and the identification of project sites that may contain Federally listed species. A summary of recommendations and actions already being implemented to insure compliance with the requirements of Section 7 of the Endangered Species Act is included in Chapter 4.

Recommendation

A joint interagency meeting was held on August 8, 1998 to develop recommendations to improve the Section 7 coordination process. Proposed refinements to the existing Pennsylvania Natural Diversity Inventory (PNDI) search program were discussed. These included revisions to agency coordination and reporting and tailoring the PNDI search radii to meet the needs of the USFWS. Additionally, due to USFWS concerns for impacts to certain species of Federal concern, particularly the Bog turtle (*Clemmys muhlenbergii*), additional “secondary screening” criteria were discussed to red flag potential new sites. An interagency workgroup was formed to assess various secondary-screening options; however, a process has not been finalized as of this date.

To assist regulatory agency field staff in identifying potential bog turtle habitat/sites, the USFWS and Pennsylvania Fish and Boat Commission have conducted several training courses that included identification and evaluation of endangered species habitat. It is recommended that these training courses continue and regulatory agencies, including COE, PADEP, and CCD staff, be encouraged to attend.

Continued coordination with the USFWS is needed in order to ensure that PASPGP coordination and project review procedures are in compliance with the requirements of Section 7. Refinement of the SOP is an appropriate mechanism to address the issues raised.

6. Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (Section 106) specifies that Federal authorization may not be granted for any project that affects historic or archeological resources until coordination in accordance with Section 106 is completed. A Section 106 coordination process was developed for the PASPGP, and is detailed in the SOP document, and is generally being followed by both the Corps and PADEP. The monitoring effort has documented instances where PASPGPs were issued, inadvertently, without the required Section 106 coordination, primarily due to deficiencies in the coordination process, which is being revised.

Recommendations

It is recommended that the Section 106 coordination process be refined to better insure that PHMC concerns and Section 106 issues are flagged and addressed at the appropriate time in the review process. Efforts to refine this coordination process are being coordinated through the SOP review group. Joint agency training sessions may also be necessary.

7. Identification of Impacts

The Federal Section 404 program requires that all cumulative impacts associated with a single and complete project, are evaluated, including primary, secondary and temporary impacts. The Monitoring Report has shown that GPs are not always coordinated for single and complete project reviews, therefore cumulative impacts associated with the overall project cannot always be identified or evaluated.

Pennsylvania Department of Environmental Protection Waiver #14 is for the maintenance of artificial ponds and reservoirs. While the Corps may or may not regulate this activity depending on the method of maintenance, the Corps' concern is that instances have occurred where applicants have conducted the activity, in noncompliance with Federal requirements by performing maintenance on ponds and reservoirs that have reverted largely to wetlands.

Federally regulated wetlands can also be impacted in instances where wetlands are located within a stream channel as these wetlands are considered to be 'waters of the Commonwealth'. Additionally, under Waiver 2, streams can be filled provided the drainage area does not exceed 100 acres. Consequently, headwater sections of stream channels and associated wetlands have been filled using Waiver 2. Some of these activities would have been reporting, others non-reporting to the Corps under the Corps NWP program. This analysis did not differentiate between these two types of Federal review. However, through the NWP notification procedures, the Corps could have addressed the wetland and stream impacts and could require avoidance and minimization or compensation.

Additionally, the Monitoring Report has identified that in a few instances wetlands inundated by less than 18" of water were not considered to be impacted, (as technically they would still be classified as wetlands). Under the State and Federal program these impacts should be considered. Additionally, the monitoring report has identified the need to clarify how to identify impacts associated with inundation. This area needs further discussion.

Recommendation

Work that qualifies for GPs and Waivers should be included as components of PADEP Individual Permits. Impacts associated with Waivers and GPs should be identified in permit application descriptions and in the Pennsylvania Bulletin descriptions for listed projects. Coordination should be improved between the Corps and PADEP for these activities.

It is also recommended that cumulative impacts (including primary, secondary and temporary) be clarified or defined in a manner that meets the needs of both PADEP and the Corps for consistent determinations.

While no specific recommendations are provided, further coordination between the Corps and PADEP is needed to address some of the outstanding issues related to the differences in definition of 'impacts' and 'wetlands'.

Conclusions

The PADEP Chapter 105 program, in conjunction with the Federal Program, including the PASPGP, provides a greater level of protection for aquatic resources and better customer service than would the Federal program alone with the Individual and Nationwide Permit program. Some process differences were identified with the potential for more than minimal impacts, which in a few instances resulted in more than minimal impacts under the PASPGP. Recommendations for improving the PASPGP process and implementation are provided in the report, many of which are already underway. Recommendations include modifications to application forms, improved file documentation, joint agency training, and new PASPGP procedures. The monitoring effort identified many positive findings concerning the PASPGP process, as a result of the Corps/PADEP/CCD partnership. Also, the Corps and PADEP are continuing to work in concert with the Federal and State resource agencies to improve the PASPGP through amendment and refinements. Both the Corps and PADEP expect that the implementation of the recommendations will result in an improved PASPGP that will benefit both the resource and the regulated public. It is expected that with continued progress, the Corps may be able to recommend reissuance of the PASPGP for a five-year period.